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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. TYSHAWN WILLIAMS, Defendant and Appellant.	B261771 (Los Angeles County Super. Ct. No. BA396297)

APPEAL from a judgment of the Superior Court of Los Angeles County, Richard S. Kemalyan, Judge. Affirmed.

John Steinberg, under appointment of the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Susan Sullivan Pithey and Robert M. Snider, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Tyshawn Williams appeals from a judgment and sentence, following his convictions for first degree murders and identity theft. Appellant contends his convictions should be reversed, as the trial court erred in denying his motion for a new trial based on ineffective assistance of counsel. He further contends the court erred in failing to give an accomplice instruction. Finally, he contends there was insufficient evidence to support the special circumstance allegation that he committed the murders for financial gain. For the reasons set forth below, we reject appellant's claims and accordingly, affirm the judgment.

STATEMENT OF THE CASE

A jury found appellant guilty of the first degree murders of Claud Payne and Larry Buckner (Pen. Code, §187, subd. (a); counts 1 & 2),[1] and of appropriating the identity of Tania Manoukian (§ 530.5; count 3). As to the murder charges, the jury found true the special circumstance allegations that appellant committed multiple murders and did so for financial gain (§ 190.2, subd. (a)(1) & (3)). It further found true the allegations that appellant personally and intentionally discharged a handgun, causing great bodily injury and death to Payne and Buckner (§ 12022.53, subds. (b), (c) & (d)).

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[1] All further statutory citations are to the Penal Code, unless otherwise stated.

The trial court sentenced appellant to a term of life in prison without the possibility of parole on counts 1 and 2, plus 25 years to life for the firearm enhancement on each count under section 12022.53, subdivision (d), plus a concurrent one-year sentence on count 3. Sentence enhancements under section 12022.53, subdivisions (b) and (c) were imposed and stayed.

Appellant filed a timely notice of appeal.

STATEMENT OF THE FACTS

A. *The Prosecution Case*

According to the prosecution, appellant and the murder victims belonged to an identity theft ring. Appellant murdered Payne and Buckner because he was dissatisfied with his portion of the proceeds from the identity thefts.

1. *Appropriating the Identity of Manoukian*

Appellant's girlfriend at the time, Shakeena Leal, worked for a bank. Leal testified that appellant asked her to provide him with the identification and financial information of bank customers. On September 12, 2011, Leal assisted Tania Manoukian with a large money deposit. The next day, Leal accessed Manoukian's account without authorization. Shortly thereafter, Manoukian's account showed small Paypal credits from Shawnice Carter.[2] Carter testified she considered appellant her best friend. Subsequently, Natalie

[2] According to the prosecutor, the Paypal credits were initiated to confirm the account remained open.

Diamond, Payne's girlfriend, impersonated Manoukian and withdrew $12,700 from the account.

After receiving her bank statement, Manoukian noticed the withdrawals. She contacted the bank, and a bank investigator, Karl Bautista, conducted an investigation. The investigation determined that Leal had improperly accessed Manoukian's account and signature page. Leal was fired, and subsequently convicted of identity theft. Diamond pled guilty to appropriating Manoukian's identity, and served jail time for the offense.

2. *Appellant's Dissatisfaction with his Share of Proceeds from the Identity Thefts*

Domonique Mims knew both appellant and the victims, and considered them good friends. Mims also knew Rondell Wade, who had approached appellant about becoming involved with the identity theft ring. Appellant gave Wade some "work" -- i.e., information used to appropriate another's identity -- which Wade brought to Payne. Wade received a third of the proceeds for the work. In early October 2011, appellant left a threatening message on Wade's voicemail. In the voicemail, appellant said that Wade had "shorted" him out of his money. Appellant said he was not "playing." He stated: "You don't know who I am." "I'm a real Crip. I'm a real Raymond."[3] Shortly thereafter, appellant asked Mims

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[3] Los Angeles County Sheriff's Department detective Michael Valento testified that appellant was a self-identified

to introduce him to Payne. Mims did so and received one-third of the proceeds for being the "middle man."[4]

Diamond testified that she and Payne met appellant several times during the months before the murders. Payne and appellant had arguments about money. Appellant wanted more than a third of the proceeds from the identity thefts. Diamond thought appellant was being greedy. She also told Payne she did not trust appellant. Payne told her not to get involved and said, "don't worry about it."

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member of the Raymond Avenue Crips, a criminal street gang.

[4] At trial, Wade could not identify appellant. He said he knew a "Tyshawn Williams," but that person had braids, whereas appellant did not have braids at the time of trial. Although Wade initially said he did not remember being part of an identity theft ring, he acknowledged previously telling a grand jury that he and Payne would get cash from banks using customer "profiles," i.e., documents containing names, addresses, and banking information. Wade could not remember if he received any profiles from "Tyshawn Williams." After being shown a transcript of his grand jury testimony stating that he had received profiles from "Tyshawn Williams," Wade testified he did not remember giving that testimony. Los Angeles County Sheriff's Department detective Dameron Peyton testified that Wade was "petrified" about being a witness in the case.

3. *The Murders of Payne and Buckner*

On October 17, 2011, Payne called Diamond, asking her to meet him at 126th and Berendo streets, across from the Helen Keller Park. When Diamond arrived in her dark gray Chrysler, Payne and Buckner were sitting in Payne's black Mercedes-Benz. Payne was in the driver's seat, and Buckner was next to him. Diamond got into Payne's vehicle, and Payne told her he was waiting for appellant. Because the neighborhood made Diamond feel uncomfortable, she asked Payne why they were in the area. Payne stated that he and appellant had agreed to meet at the location so Payne could give appellant some of the proceeds from the identity thefts.[5]

Diamond testified that Payne had about $7,000 in his left shirt pocket, and he planned to give appellant one-third of that money. Appellant was asking for two-thirds of the proceeds. Diamond thought it was unfair. She told Payne that appellant "should only get the third that was agreed upon and not any more." She reiterated that she did not trust appellant.

After speaking with Payne for about 10 to 15 minutes, Diamond noticed a gray Infiniti pass by their vehicle. She overheard the driver of that vehicle -- whom she identified as appellant's girlfriend "Tanesha Green" -- say, "Babe, they're

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[5] Telephone records showed a call and a text message between Payne's cell phone and appellant's cell phone shortly before the shootings.

here." Shortly thereafter, appellant walked up 126th Street to Payne's vehicle and entered it. Payne told Diamond to return to her car, and she did so.[6]

While sitting in her car, Diamond heard sounds of an argument from Payne's car, and saw Payne and appellant gesticulating. She heard one or two gunshots from Payne's car before seeing him exit the vehicle and run away. Appellant also exited and began chasing Payne. Appellant was holding a gun. Diamond drove toward them, trying to intercept Payne and pick him up. As she did so, appellant shot Payne twice in the back.

Diamond leaned over to open her car's passenger door and yelled at Payne to get in. Payne told Diamond -- who was pregnant with his child -- "Just go" and continued running. He said he would go to a friend's house. Diamond drove to a gas station and called 911 to report the shooting.

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[6] Mims testified that Alicia Caldwell was appellant's girlfriend who drove a silver Infiniti. At trial, Caldwell asserted her Fifth Amendment right not to testify and was granted use immunity. Caldwell, an actress, testified she never dropped off appellant either on El Segundo Boulevard or at the Helen Keller Park. She acknowledged previously telling detectives in a taped interview that on the day of the murders, she had dropped off appellant either on El Segundo or at the Helen Keller Park. Caldwell considered Shawnice Carter a friend, and she learned from Carter that two men (Payne and Buckner) had been killed in front of her house, across from the Helen Keller Park.

John Johnson testified that on October 17, 2011, at around 5:00 p.m., he was driving on Berendo and approaching 126th Street when he observed an oncoming black Mercedes in his lane. Johnson stopped his vehicle, and the Mercedes veered sharply before coming to a stop about 25 feet from Johnson. The driver of the Mercedes got out and started running. Seconds later, the passenger in the rear seat got out, chased the driver, aimed a handgun at him, and shot him three or four times. The shooter was a clean-cut, well-built Black man wearing a white T-shirt and tan khaki shorts. He was in his early twenties and about five feet, nine inches.[7]

After the driver hit the ground, the shooter ran away. Johnson went to the victim and yelled out for someone to call 911. People began to congregate around the scene. A woman tried to take Payne's cell phone, but Johnson told her to put it back. When Payne was transported to the hospital, he had less than $300 on his person.

Ana Vara testified she was in the Helen Keller Park when she saw an African-American man wearing a white T-shirt exit a black car. The man drew a gun and fired it into the vehicle. A gray car then approached the black car and drove by. Five to 10 seconds later, more shots followed.

Donald Griffin, a recreation advisor and supervisor for the Helen Keller Park, testified that he was working in a

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[7] Appellant, an African-American male in his twenties at the time of the murders, is five feet, eight inches tall.

park building located near the corner of 126th and Berendo. Griffin saw a car with three occupants pull up. Two occupants then got out and ran. Griffin went to fax some papers when he heard multiple gunshots. He exited his office to help escort children, who were playing in the park, to a safer location. After Griffin took "control of the kids," he noticed a Black man in a white shirt running toward a nearby house. People had gathered around a nearby car, so Griffin walked toward the scene. He saw a dead man in the passenger seat and another dead man in the middle of the street. Griffin returned to his office and called for sheriffs and an ambulance.

Vivian Harris testified that at around 5:00 p.m., she was coming home from work. She was stopped at the corner of Berendo and 125th Street when she saw a man in his twenties. He ran north on Berendo before turning west on 125th Street. He was wearing a white T-shirt and khaki pants, and his hair was braided. Harris happened to glance down the street when she saw a man lying on the street. She pulled up to the curb, ran into her house and yelled for someone to call 911. She stayed inside until the police arrived.

Brandie Harris, Vivian's daughter, testified she was inside when she heard gunshots. A few minutes later, her mother came into the house and said, "Call an ambulance, someone's [lying] in the middle of the street." Brandie went outside and noticed a medium-complexioned male in a white T-shirt running away. She called 911, and then walked

toward the man lying in the street. Brandie saw a black Mercedes parked nearby. She recognized the vehicle because she often saw it parked at Wade's house. Brandie testified that Wade was a close friend. He claimed to be a member of the Raymond Avenue Crips, which claimed the area around Helen Keller Park. Brandie called Wade to inform him that his friend "Clyde or Claud" was shot near Wade's house. Wade was shocked.[8]

4. *Appellant's Conduct Following the Murders*

After the shootings, appellant cut his braids, stopped using his cell phone, and cancelled his Facebook account. However, appellant was identified as a suspect shortly after the shootings. When arrested, appellant resisted and tried to flee.

5. *Appellant's Statements to Fellow Inmate Troy Ellison*

Troy Ellison admitted having suffered numerous felony convictions, including a sexual act against a minor in 1996, resisting arrest and giving false information in 1997, domestic violence in 1994, 1996 and 2003, and a narcotics offense in 2013. In June or July 2013, while in jail on the narcotics offense, Ellison was housed in a module for inmates representing themselves (the pro per module). Appellant was Ellison's neighbor for about three months.

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[8] At trial, Wade testified that the location of the murders surprised him because Payne would be in that neighborhood only when visiting Wade. On that day however, Payne had not called to say he would be visiting.

Ellison assisted appellant with a motion to dismiss the grand jury indictment. Appellant was upset that a "white girl" (referring to Diamond) had lied to the jury. He admitted being acquainted with her, but not during the time frame she claimed. Appellant said he knew her because she was romantically "involved with a person that [he] was doing the fraud with." Appellant also stated that it was impossible for the woman to have seen him "commit the murder," because the car he was in had tinted windows and it had rolled off to the side. Appellant also told Ellison his "ace in the hole" was that a white male witness did not identify him as the shooter.

Appellant told Ellison he had been committing identity thefts for about a year, and claimed that the fraud resulted in "thousands and thousands of dollars." Appellant said that the "one of the victims and the white girl" had "fucked him out of some money." Appellant said he texted the victims to meet at the crime scene about the money earned from the identity thefts. Appellant chose the location because it was his "neighborhood." A woman appellant described as an actress had dropped him off at the location and later picked him up and driven him away.

Appellant described the murders. He was in the back seat of a black car when an argument developed. An accomplice, one of appellant's "homeys," shot the first victim. The other victim jumped out of the driver seat and started running down the middle of the street. Appellant ran after

him and "gunned him down." Appellant said he "smoked . . . that man for fucking off with his money."

Defense counsel elicited testimony from detective Peyton that when Ellison recounted appellant's statements, Ellison had asked the detective to help get him into a drug rehabilitation program. "[H]e was very emphatic about his inability to do four or five years at his age. . . ." Ellison told the detective that appellant had said the murders occurred at night, although this was not factually true. Appellant also had said the murders occurred in a secluded spot, and that he was wearing a black hoodie, blue jeans, and a baseball cap at the time. Finally, although appellant referred to a "white man" who did not identify him, the detective was unaware of such a person.[9]

B. *Defense Case*

Appellant did not testify, and presented no affirmative case.

DISCUSSION

A. *Motion for a New Trial*

1. *Relevant Factual Background*

Following the jury's verdict, appellant moved for a new trial on the ground that his trial counsel had been ineffective for failing to interview other inmates in the jail's pro per

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[9] Johnson was shown a six-pack, but could not identify appellant as the shooter. At trial, Johnson stated that appellant did not look like the shooter because appellant's complexion was darker than the shooter's. Johnson, however, is not a white male.

module, whose testimony would have undermined Ellison's trial testimony. Trial counsel and his investigator testified at the hearing on the motion for a new trial. Appellant had told the investigator that according to Gerjuan D. Harmon and three other inmates in the pro per module, Ellison planned to make a deal to get out of jail. The investigator recommended to counsel that he interview the four inmates.

Counsel testified that although he did not prohibit the investigator from interviewing the inmates, he made a tactical decision not to personally interview them. He explained that the inmates were associated with unidentified gangs, possibly rival gangs. Thus, although the inmates might provide helpful information, they might "turn on" appellant when called to testify. That would have been "devastating" to appellant's defense.

Harmon also testified at the hearing. According to Harmon, Ellison said he felt disrespected by something appellant had said about Ellison's girlfriend. Ellison said: "He going to pay." "Nigga think he hard because his bitch is a model. But God don't like ugly." Ellison allegedly said that based on what he learned from reviewing appellant's paperwork, he was going to go to the detectives and lie about the case.

Following arguments, the court denied appellant's motion for a new trial. The court found that "somewhere along the way . . . the ball was dropped" between counsel and his investigator about the potential inmate witnesses. Nevertheless, the court determined that appellant failed to

meet his burden to show ineffective assistance of counsel. The court concluded that even without interviewing Harmon, trial counsel had effectively challenged Ellison's credibility. The court noted that counsel succeeded in establishing that Ellison's testimony differed from those of the eyewitnesses on key facts, including the location and time of the murders and the clothing appellant wore at the time. The cross-examination thus "establishe[d] that trial counsel succeeded in a manner to be expected of reasonably competent counsel acting as a diligent advocate." Moreover, even had counsel presented Harmon as a trial witness, the court found, "it is not reasonably probable . . . that a more favorable result would occur." "It would have impeached Troy Ellison, but not the other trial witnesses in this case," particularly Natalie Diamond.

2. *Analysis*

Appellant contends the trial court erred in denying his motion for a new trial, arguing that the failure to impeach Ellison's testimony with Harmon's proposed testimony constituted ineffective assistance of counsel. We disagree.

"To secure reversal of a conviction upon the ground of ineffective assistance of counsel under either the state or federal Constitution, a defendant must establish (1) that defense counsel's performance fell below an objective standard of reasonableness, i.e., that counsel's performance did not meet the standard to be expected of a reasonably competent attorney, and (2) that there is a reasonable probability that defendant would have obtained a more

favorable result absent counsel's shortcomings." (*People v. Cunningham* (2001) 25 Cal.4th 926, 1003; see *Strickland v. Washington* (1984) 466 U.S. 668, 687-688 [to prevail on a claim of ineffective assistance of counsel, appellant must show both inadequate performance and prejudice].) Here, appellant has failed to demonstrate that he would have obtained a more favorable result had Harmon been interviewed and called as a witness. First, as the trial court noted, trial counsel had effectively attacked Ellison's credibility and testimony. Counsel had elicited testimony suggesting that Ellison provided his testimony in exchange for getting into a drug rehabilitation program. Counsel also had elicited testimony that key aspects of Ellison's testimony were different from eyewitness testimony and forensic evidence. According to Ellison, appellant claimed to have been wearing a black hoodie and blue jeans. Johnson, Vara and Vivian Harris all testified that the shooter wore a white T-shirt and khaki pants. According to Ellison, appellant said there were two shooters. No other percipient witness saw another shooter. Ellison also recounted appellant's statement that the murders occurred at night, which was not true. Thus, it is unlikely that Harmon's proposed testimony -- suggesting Ellison was lying to avenge a slight to his girlfriend -- would have had any additional impact on Ellison's credibility.

Moreover, as the trial court accurately observed, Harmon's testimony would have undermined only Ellison's testimony. It would not have undermined Diamond's

percipient testimony that appellant killed Buckner and Payne. Nor would it have undermined the other witnesses' testimony that the shooter's build and hairstyle matched appellant's. In addition, Harmon's proposed testimony would not have undermined the circumstantial evidence showing that appellant was the killer -- the calls and texts from his phone shortly before the shootings and his behavior afterward showing a consciousness of guilt. On this record, it was not reasonably probable that appellant would have obtained a more favorable result absent counsel's failure to interview Harmon. Thus, the trial court properly denied appellant's motion for a new trial.

B. *Accomplice Testimony*

At trial, appellant did not request an accomplice instruction. On appeal, he contends the trial court prejudicially erred in failing to give such an instruction sua sponte. Under section 1111, "[a] conviction cannot be had upon the testimony of an accomplice unless it be corroborated by such other evidence as shall tend to connect the defendant with the commission of the offense; and the corroboration is not sufficient if it merely shows the commission of the offense or the circumstances thereof." "If sufficient evidence is presented at trial to justify the conclusion that a witness is an accomplice, the trial court must so instruct the jury, even in the absence of a request." (*People v. Brown* (2003) 31 Cal.4th 518, 555.)

Here, with respect to the murder charges, there was insufficient evidence to support giving an accomplice

instruction. Under section 1111, "[a]n accomplice is . . . defined as one who is liable to prosecution for the identical offense charged against the defendant on trial in the cause in which the testimony of the accomplice is given." "This definition encompasses all principals to the crime [citation], including aiders and abettors and coconspirators. [Citation.]" (*People v. Stankewitz* (1990) 51 Cal.3d 72, 90 (*Stankewitz*).) The members of the identity theft ring, such as Leal, Mims, and Wade, were not aiders and abettors or conspirators in the deaths of Payne and Buckner. No evidence shows they participated in the murders or aided and abetted them. Similarly, no evidence suggests Ellison was an accomplice to the murders.

Additionally, there was insufficient evidence to show that Caldwell was an accomplice in the murders. Although Caldwell drove appellant to and from the crime scene, that is insufficient to establish that she was an accomplice to the murders. "'[A]n act [that] has the effect of giving aid and encouragement, and . . . is done with knowledge of the criminal purpose of the person aided, *may* indicate that the actor intended to assist in fulfillment of the known criminal purpose.'" "'However, . . . the act may be done with some other purpose [that] precludes criminal liability.'" (*People v. Valdez* (2012) 55 Cal.4th 82, 147, quoting *People v. Beeman* (1984) 35 Cal.3d 547, 559; see *Stankewitz*, *supra*, 51 Cal.3d at p. 90 [presence at the scene of a crime or failure to prevent its commission insufficient to establish aiding and abetting].) Here, no evidence suggests that Caldwell knew

or should have known that appellant intended to kill Payne and Buckner. The fact that Caldwell asserted her Fifth Amendment right to remain silent and was granted use immunity is not dispositive. (See, e.g., *Stankewitz*, *supra,* at p. 90 ["The fact that a witness has been charged or held to answer for the same crimes as the defendant and then has been granted immunity does not necessarily establish that he or she is an accomplice."].) In short, there was insufficient evidence for the trial court to give an accomplice instruction.

With respect to the identity theft charge, the testimony of the other members of the identity theft ring was sufficiently corroborated. (See *People v. Williams* (2008) 43 Cal.4th 584, 636-637 [even if trial court erred in refraining from instructing jury that witness was accomplice as a matter of law, error was harmless because there was sufficient corroborating evidence].) "'Corroborating evidence may be slight [and] may be entirely circumstantial' [citation], and although that evidence must implicate the defendant in the crime and relate to proof of an element of the crime, it need not be sufficient to establish all the elements of the crime. [Citation.]" (*Id*. at p. 638, quoting *People v. Hayes* (1999) 21 Cal.4th 1211, 1271.) The victim Manoukian and the bank investigator Bautista testified that Leal, appellant's girlfriend, assisted Manoukian with a large deposit and then inappropriately accessed Manoukian's accounts. Manoukian's bank statement showed entries attributed to Carter, who considered appellant her best

friend. Leal was subsequently fired for accessing Manoukian's account and convicted of identity theft. Diamond also pled guilty to appropriating Manoukian's identity. Her testimony that appellant was part of the identity theft ring with Payne was corroborated by calls and text messages between appellant and Payne. On this record, there was sufficient corroborating evidence. Accordingly, any error in the trial court's failure to give an accomplice instruction was harmless.

C. *Sufficiency of the Evidence*

Finally, appellant contends there was insufficient evidence to support the allegation that he committed the murders for financial gain.[10] We disagree. To prove the

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[10] "In determining whether the evidence is sufficient to support a conviction or an enhancement, 'the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' [Citations.] Under this standard, 'an appellate court in a criminal case . . . does not ask itself whether it believes that the evidence at the trial established guilt beyond a reasonable doubt.' [Citation.] Rather, the reviewing court 'must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence -- that is, evidence which is reasonable, credible, and of solid value -- such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.' [Citation.]" (*People v. Vy* (2004) 122 Cal.App.4th 1209, 1224, italics omitted.) "In deciding the sufficiency of the evidence, a reviewing court resolves

financial gain enhancement, the prosecution must show that "'"the defendant committed the murder in the expectation that he would thereby obtain the desired financial gain."'" (*People v. Carasi* (2008) 44 Cal.4th 1263, 1309 (*Carasi*), quoting *People v. Edelbacher* (1989) 47 Cal.3d 983, 1025.) "However, such gain need not be the sole or main motive for the murder." (*Carasi*, at p. 1308.) Here, prior to the murders, appellant and Payne had argued over how much appellant was entitled to from the identity thefts. When appellant and Payne agreed to meet, Payne had $7,000 in his pocket and was prepared to give appellant a third. The two men were seen arguing just before appellant shot Payne. Payne was found with less than $300 on him. On this record, a reasonable jury could conclude that appellant secured a financial gain from the murders, and that the gain was not merely incidental to the shooting. (Cf. *People v. Maury* (2003) 30 Cal.4th 342, 402 [substantial evidence supported robbery-murder special circumstance where murder victim was found without cash known to be in her purse].) Accordingly, there was sufficient evidence to support the financial gain special circumstance allegation.

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neither credibility issues nor evidentiary conflicts. [Citation.] Resolution of conflicts and inconsistencies in the testimony is the exclusive province of the trier of fact. [Citation.] Moreover, unless the testimony is physically impossible or inherently improbable, testimony of a single witness is sufficient to support a conviction. [Citation.]" (*People v. Young* (2005) 34 Cal.4th 1149, 1181.)

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

MANELLA, J.

We concur:

EPSTEIN, P. J.

COLLINS, J.